

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ARIANNA G.,  
  
a Person Coming Under the Juvenile Court Law.

B261544  
(Los Angeles County  
Super. Ct. No. CK30550 )

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ELIZABETH G.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County,  
D. Zeke Zeidler, Judge. Affirmed.

Matthew I. Thue, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County  
Counsel, and Stephen D. Watson, Deputy County Counsel, for Plaintiff and  
Respondent.

Elizabeth G. (Mother) appeals from jurisdictional and dispositional orders of the dependency court under Welfare and Institutions Code section 300, subdivisions (a) and (b)<sup>1</sup> with respect to her daughter, Arianna G. The court found jurisdiction under allegations that Mother and Father's drug abuse endangered Arianna's well-being, and that Mother's physical abuse of Arianna placed her at risk of substantial harm. On appeal, Mother challenges only the sufficiency of the jurisdiction finding on the grounds of physical abuse. She contends, in substance, that Arianna's hearsay statements that Mother repeatedly struck her with her hand and a belt are insufficient to prove that Arianna suffered, and was at risk of suffering, significant physical harm. We find the evidence sufficient and affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

### *Detention*

The family consists of Mother, Father Jose G.,<sup>3</sup> Arianna's half-brother Hector S. (born Oct. 1994), and seven-year-old Arianna (born April 2007).

In May 2014, DCFS received a report that Mother regularly failed to pick up Arianna from school on time, sometimes being as much as two hours late. The assigned caseworker interviewed Arianna's godmother, Gina M., and her former babysitter, Gracia M. Without naming the source of the information, the caseworker reported that Mother often screamed at Arianna, pulled her hair, did

---

<sup>1</sup> Further unspecified statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Because Mother challenges only the jurisdictional findings based on alleged physical abuse of Arianna, we focus on the evidence supporting those findings, and do not discuss the evidence supporting the jurisdictional findings based on Mother and Father's drug abuse.

<sup>3</sup> Father is not a party to this appeal.

not feed her, and sometimes left Arianna alone on the weekends and at night, intending Gina M. and Gracia M. to babysit.<sup>4</sup> The caseworker also reported that Mother had recently been arrested for drug possession, and had tested positive for methamphetamine in June 2014.

In July 2014, the caseworker interviewed Arianna, who was living with maternal grandmother. Arianna said she wanted to stay with maternal grandmother because Mother was “mean,” she yelled at Arianna, and struck her with a belt or her hand. Hector, who was now an adult and living with maternal grandmother, expressed concern that if Arianna returned to Mother, Arianna would not be fed or bathed. Based on this information, the dependency court ordered Arianna detained in the care of maternal grandmother.

### *Section 300 Petition*

DCFS filed a petition under section 300, subdivisions (a) and (b), alleging that Arianna was at risk of harm because Mother pulled her hair, struck her with belts, and called her “demeaning and derogatory names.” The petition further alleged that Mother and Father’s use of methamphetamine rendered them incapable of caring for Arianna.

### *Jurisdiction/Disposition Report*

When interviewed for the jurisdiction/disposition report, Arianna stated that she did not want to live with Mother because Mother “was very mean and would

---

<sup>4</sup> The detention report did not specify who gave the caseworker the information. In September 2014, Gina M. wrote a letter stating that the caseworker apparently wrote down information from other sources and attributed it to Gina M. Gina M. stated that the information in the report was incorrect, and at the jurisdictional hearing, she denied making any of the statements attributed to her.

hit [her] with a belt and with her hand. She is mean and would always say bad words. . . . She would sleep when [Arianna] went [to] school and she would pick [her] up late from school.”

For her part, Mother denied striking hitting Arianna. Also, maternal grandmother, maternal great-cousin, and Gracia M. denied witnessing any abuse.

### *Jurisdiction/Disposition Hearing*

At the jurisdiction/disposition hearing, several witnesses testified: dependency investigator Laura Lopez, babysitter Gracia M., godmother Gina M., Hector, and Mother. We briefly summarize the relevant testimony.

Lopez testified that she interviewed Mother, Father, maternal grandmother, a family friend, and Gracia M. None had ever seen marks or bruises on Arianna, and Arianna had never told them that Mother abused her. Further, Arianna’s school did not report concerns of abuse. However, Arianna told Lopez she was afraid of Mother because Mother hit her with a belt and her hand.

Gracia M. testified that Arianna attended her child care facility every day for about a year in 2013. Arianna always appeared well-groomed, well-fed, and well-cared for. Gracia M. saw no signs of abuse.

In her testimony, Gina M. acknowledged that Mother can be impatient and sometimes screamed at Arianna. But Gina M. had never observed any signs of abuse.

Hector testified that Arianna occasionally complained to him about not having food and being hungry. Hector had lived with Mother and Arianna for five to six months, and during that time he never saw Mother hit Arianna, pull her hair, or otherwise physically abuse her, although he heard her call Arianna names. After Arianna moved in with maternal grandmother, Arianna told Hector that Mother hit

her and yelled at her. When maternal grandmother told Arianna she would need to stay with Mother if she did not do her homework, Arianna burst into tears and said she did not want to return to Mother because Mother hit her.

Mother testified that she had never physically abused Arianna. She denied hitting her or pulling her hair (though Arianna sometimes complained that it hurt when Mother combed her hair). When Arianna misbehaved, Mother spanked Arianna occasionally with an open hand over her clothes.

Arianna was seven years old. When called to testify, she was unable to confirm the difference between the truth and a lie, and thus did not qualify as a witness.

The dependency court found the allegations of the petition to be true by a preponderance of the evidence and found Arianna to be a person described by section 300, subdivisions (a) and (b). The court found under section 361, subdivision (c) by clear and convincing evidence that remaining in Mother's home would pose substantial danger to Arianna's safety or emotional health and there was no reasonable means other than removal to keep her safe. The court removed Arianna from Mother's custody and ordered monitored visits at least once a week, drug rehabilitation, anger management and parenting education. The court identified maternal grandmother as the educational rights holder and ordered that Arianna not be left alone with maternal grandmother's boyfriend. Mother timely appealed.

## **DISCUSSION**

Mother contends that the only evidence supporting the two counts of the petition alleging physical abuse (allegations a-1 and b-1 of the petition) is Arianna's out of court statements, and that those statements do not constitute

substantial evidence of serious physical abuse or a substantial risk of such abuse. We disagree.<sup>5</sup>

Section 300, subdivision (a), allows a child to be adjudged a dependent of the juvenile court when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent. . . . For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child . . . , or a combination of these and other actions by the parent . . . which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ‘serious physical harm’ does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.” (§ 300, subd. (a).)

A child is within the jurisdiction of the juvenile court under section 300, subdivision (b) if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . .” (§ 300, subd. (b).) “Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300

---

<sup>5</sup> Because she challenges only the jurisdictional findings regarding the physical abuse counts, and not the findings based on her and Father’s drug abuse, DCFS contends Mother’s appeal should be dismissed. We decline to dismiss the appeal, and rather exercise our discretion to consider it. “[W]e generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 762-763.)

. . . .’ To establish jurisdiction under section 300, subdivision (b), the department must prove by a preponderance of the evidence that there was neglectful conduct by the parent in one of the specified forms; causation; and “‘serious physical harm or illness’” to the child or ‘substantial risk’ of such harm or illness. [Citations.]” (*In re R.C.* (2012) 210 Cal.App.4th 930, 941.) ““The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” [Citation.]” (*In re Jesus M.* (2015) 235 Cal.App.4th 104, 111.)

“We review the juvenile court’s findings under section 300 for substantial evidence and will affirm the judgment based on those findings if they are supported by reasonable, credible evidence of solid value. [Citation.]” (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1160.) ““It is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citation.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact.’ [Citation.]” (*In re A.S.* (2011) 202 Cal.App.4th 237, 244 (A.S.).)

Here, the only evidence supporting the dependency court’s findings based on physical abuse is Arianna’s hearsay statements in the detention and jurisdiction reports complaining of abuse, and Hector’s testimony that Arianna told him Mother hit her. Mother asserts that this hearsay evidence is insufficient.

Regarding hearsay, section 355 provides that hearsay evidence contained in a social study report may be admissible and constitute competent evidence upon which a finding of dependency jurisdiction may be based. (§ 355, subd. (b).) If a party timely objects to the admission of specific hearsay evidence contained in such a study, that evidence “shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based,” unless one of several exceptions applies. (§ 355, subd. (c)(1).) One exception is for hearsay by a minor under 12 years of age who is the subject of the jurisdictional hearing. (§ 355, subd. (c)(1)(B).) Hearsay by such a minor is admissible in a dependency proceeding unless the objecting party “establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.” (§ 355, subd. (c)(1)(B).)

The California Supreme Court considered section 355 in *In re Lucero L.* (2000) 22 Cal.4th 1227 (*Lucero*), in which the issue was whether section 355 controls when the hearsay statements come from a minor who is deemed incompetent to testify because he or she lacks the capacity to distinguish between truth and falsehood. The court held that in such a case, “section 355 notwithstanding,” due process concerns require that the dependency court find that ““the time, content and circumstances of the statement provide sufficient indicia of reliability”” in order for the statement to form the exclusive basis for sustaining jurisdiction over the minor. (*Id.* at pp. 1247-1248; see *id.* at pp. 1250-1251 (conc. opn. of Kennard, J.) [out-of-court statements of a child who is subject to a jurisdictional hearing and disqualified as a witness because of the lack of capacity to distinguish between truth and falsehood at the time of testifying may not form the sole basis for a jurisdictional finding unless they show special indicia of reliability].) If the minor’s hearsay statements are deemed sufficiently reliable,



corroboration is not necessary. (*Id.* at pp. 1248-1249; see *In re April C.* (2005) 131 Cal.App.4th 599, 610, fn. 5.)

In the present case, Mother does not challenge the admissibility of the hearsay evidence in the reports. Instead, she argues that Arianna's statements are insufficient under *Lucero* to sustain the court's findings.

In finding the allegations supported by a preponderance of the evidence, the court found that Arianna's statements were "inherently credible." Also, the court reasoned in part that evidence of Mother's "lack of control and patience" supported Arianna's statements.<sup>6</sup>

The juvenile court's reasoning is consistent with *Lucero*, which noted that circumstances such as spontaneity and the lack of motive to lie may constitute "special indicia of reliability." (*Lucero, supra*, 22 Cal.4th at p. 1246.) Here, when asked if she wanted to live with Mother or maternal grandmother, Arianna told DCFS caseworkers that she wanted to live with maternal grandmother because Mother is mean and hits her. Also, she told an assessor that Mother "hits [her] hard." In addition, Arianna told Hector that Mother hit her. These statements complaining of abuse were spontaneous, made without any specific inquiry on the topic and without a motive to lie. Because Arianna's statements are reliable under *Lucero*, no corroboration was necessary. (*Lucero, supra*, 22 Cal.4th at pp. 1248-1249.)

Mother contends that, even if Arianna's statements are credited, the evidence is not sufficient to establish that Arianna suffered serious physical harm or was at risk of such harm. We disagree. Arianna's statements establish that

---

<sup>6</sup> The court also cited Hector's testimony of "similar treatment to him" to support its jurisdictional findings. However, Hector never testified that Mother abused him.

Mother repeatedly hit Arianna not just with her hand, but also with a belt.<sup>7</sup> Given Arianna’s young age, seven years old, the juvenile court could reasonably infer that Mother’s use of a belt would likely cause serious physical harm to Arianna and cause a substantial risk of such harm in the future. Further, Arianna repeatedly expressed fear of returning to Mother because of Mother’s violence. Because the substantial evidence standard of review requires that we “accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact.” [Citation.]” (A.S., *supra*, 202 Cal.App.4th at p. 244), we conclude that the evidence is sufficient to sustain the dependency court’s findings.

//

//

//

//

//

//

//

//

//

//

//

---

<sup>7</sup> The evidence that Mother yelled at Arianna and called her names does not support jurisdiction under subdivisions (a) and (b). (See *In re Daisy H.* (2011) 192 Cal.App.4th 713, 718 [“Neither section 300, subdivision (a) nor (b) provides for jurisdiction based on ‘emotional harm.’ Subdivisions (a) and (b) state that the court may adjudge a child a dependent of the court if ‘[t]he child has suffered, or there is a substantial risk that the child will suffer, serious *physical* harm . . . .’ (Italics added.)”].)

**DISPOSITION**

The judgment is affirmed.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

WILLHITE, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.